

## PART 1309—HEAD START FACILITIES PURCHASE

### Subpart A—General

#### 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c) and 644(f) of the Head Start Act, 42 U.S.C. 9801 et seq., as it applies to grantees operating Head Start programs under the Act. It describes the procedures for applying for Head Start grant funds to purchase facilities in which to operate Head Start programs, and the conditions under which grant funds may be awarded to purchase facilities. It also specifies the measures which must be taken to protect the Federal interest in facilities purchased with Head Start grant funds.

#### 1309.2 Approval of previously purchased facilities.

Head Start grantees, which purchased facilities after December 31, 1986, and before October 7, 1992, may request retroactive approval of the purchase by submitting an application which conforms to the requirements of this Part and the Act. Grant funds may be used to pay facility purchase costs incurred only after the responsible HHS official approves an application for a previously purchased facility.

#### 1309.3 Definitions.

As used in this part;

*ACF* means the Administration for Children and Families in the Department of Health and Human Services, and includes the Regional Offices.

*Acquire* means to purchase in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, for professional fees, for closing costs, and for any other costs associated with the purchase of the property that are usual and customary for the locality.

*Act* means the Head Start Act, 42 U.S.C. section 9801, et seq. *ACYF* means the Administration on Children, Youth and Families, a component of the Administration for Children and Families in the Department of Health and Human Services.

*Facility* means a structure such as a building or modular unit, appropriate for use by a Head Start grantee to carry out a Head Start program.

*Grant funds* means Federal financial assistance received by a grantee from ACF to administer a Head Start program pursuant to the Head Start Act.

*Grantee* means the local public, private non-profit or for-profit agency designated to operate a program pursuant to 42 U.S.C. 9836 or 42 U.S.C. 9840a

*Head Start center or a direct support facility for a Head Start program* means a facility used primarily to provide Head Start services to children and their families, or for administrative or other activities necessary to the conduct of the Head Start program.

*Modular unit* means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

*Purchase* means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved purchase of a facility, commenced between December 31, 1986 and October 7, 1992, as permitted by the Head Start Act, and by Sec. 1309.2 of this part.

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

*Responsible HHS official* means the official who is authorized to make the grant of financial assistance to operate a Head Start program, or such official's designee.

## **Subpart B—Application Procedures**

### **1309.10 Application.**

A grantee which proposes to use grant funds to purchase a facility must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that purchase of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility, including information on the size and type of structure, the number and a description of the rooms and the lot on which the building is located (including the space available for a playground and for parking).

(c) The cost comparison described in Sec. 1309.11 of this part.

(d) If minor renovations are necessary to make the facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications required by paragraph (b) of this section for the facility as it will be after renovations are complete.

(e) The intended uses of the facility, including information demonstrating that the facility will be used principally as a Head Start center or a direct support facility for a Head Start program. If the facility is to be used for purposes in addition to the operation of the

Head Start program, the grantee must state what portion of the facility is to be used for such other purposes.

(f) Assurance that the facility complies (or will comply after completion of the renovations described in paragraph (d) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee also will assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(g) If the grantee is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the previous purchase of a facility is unable to provide such statements based on circumstances which existed at the time of the purchase, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(h) The terms of any proposed or existing loan(s) related to the purchase of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any) and information on all other sources of funding of the purchase, including any restrictions or conditions imposed by other funding sources.

(i) A statement of the effect that the purchase of the facility would have on the grantee's meeting of the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(j) Certification by a licensed engineer or architect that the building is structurally sound and safe for use as a Head Start facility. If minor renovations are necessary to make the facility suitable for use to carry out

a Head Start program, the application must include a certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed renovations.

(k) A statement of the effect that the purchase of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the purchase, such as the down payment, the cost of necessary minor renovations, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(l) A proposed schedule for acquisition, renovation and occupancy of the facility.

(m) Reasonable assurances that the applicant will obtain, or in the case of a previously purchased facility, has obtained a fee simple or such other estate or interest in the site sufficient to assure undisturbed use and possession for the purpose of operating the Head Start program. If the grantee proposes to purchase a facility without also purchasing the land on which the facility is situated, the application must describe the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility.

(n) An assessment of the impact of the proposed acquisition on the human environment if it involves significant renovation or a significant change in land use, including substantial increases in traffic in the surrounding area due to the provision of Head Start transportation services, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500-1508), and a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(o) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq. and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(p) A statement of the share of the cost of purchase that will be paid with grant funds.

(q) For a grantee seeking approval of a previous purchase, a statement of the extent to which it has attempted to comply and will be able to comply with the provisions of Sec. 1309.22(a) of this part.

(r) Such additional information as the responsible HHS official may require.

### **1309.11 Cost comparison.**

(a) A grantee proposing to purchase a facility with grant funds must submit a detailed estimate of the cost of the proposed purchase, including the cost of any necessary minor renovations, and must compare the cost of purchasing the proposed facility to the cost of renting an alternative facility.

(b) All costs of purchase and ownership must be identified, including, but not limited to, professional fees, minor renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased or previously purchased, made by a professional appraiser, must be included.

(c) The comparison described in paragraph (a) of this section must compare the cost of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the

alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and which are usable as a Head Start facility (meaning a facility large enough to meet the foreseeable needs of the Head Start grantee, and which complies with local licensing and code requirements and the access requirements of the Americans With Disabilities Act, if applicable, and section 504 of the Rehabilitation Act of 1973) or which can be made useable through minor renovation, the cost of which shall be included in the cost comparison. In the case of an application for approval of the previous purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, the grantee had no previous facility, or if the grantee continued to use its previous facility after the current facility was purchased the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service area at the time of its purchase of the current facility.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including, but not limited to, the down payment, professional fees, moving expenses, the cost of site preparation and installation of a modular unit, and the costs of necessary minor renovations; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison is twenty years, except that for the purchase of a modular unit the period of comparison is ten years. For a proposed purchase the period of comparison begins on the date on which the proposal is made. For approvals of previous purchases, the period of comparison begins on the date the purchase of the facility took place.

(f) If the facility is to be used for purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

### **1309.12 Timely decisions.**

The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.

## **Subpart C—Protection of Federal Interest**

### **1309.20 Title.**

Title to facilities acquired with grant funds vests with the grantee upon acquisition, subject to the provisions of this part.

### **1309.21 Recording of Federal interest and other protection of Federal interest.**

(a) The Federal Government has an interest in all real property and equipment purchased with grant funds for use as a Head Start facility. The responsible HHS official may agree to subordinate the Federal interest in such property to that of a lender which finances the purchase of the property subject to the conditions set forth in paragraph (f) of this section.

(b) Facilities acquired with grant funds may not be mortgaged or used as collateral, or sold or otherwise transferred to another party, without the written permission of the responsible HHS official.

(c) Use of the facility for other than the purpose for which the facility was funded, without the express written approval of the responsible HHS official, is prohibited.

(d) Immediately upon purchasing a facility with grant funds, or receiving permission to use funds for a previously purchased facility, the grantee shall record a Notice of Federal

Interest in the appropriate official records for the jurisdiction in which the facility is located. The Notice shall include the following information:

(1) The date of the award of grant funds for the purchase of the property to be used as a Head Start facility, and the address and legal description of the property to be purchased;

(2) That the grant incorporated conditions which include restriction on the use of the property and provide for a Federal interest in the property;

(3) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;

(4) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;

(5) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(6) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(e) Grantees must meet all of the requirements in 45 CFR parts 74 or 92 pertaining to the purchase and disposition of real property, or the use and disposal of equipment, as appropriate.

(f) In subordinating its interest in a facility purchased with grant funds, the responsible HHS official does not waive application of paragraph (d) of this section and Sec. 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

(1) (i) The lender shall notify the Office of the Regional Administrator, Administration for Children and Families, the Office of the Commissioner, Administration on Children, Youth and Families, Washington, D.C., and

the Office of the General Counsel, Department of Health and Human Services, Washington, DC, or their successor agencies, immediately, both telephonically and in writing of any default by the Head Start grantee;

(ii) Written notice of default must be sent by registered mail return receipt requested; and,

(iii) The lender will not foreclose on the property until at least 60 days after the required notice by the lender has been sent.

(2) Such notice will include:

(i) The full names, addresses, and telephone numbers of the lender and the Head Start grantee;

(ii) The following statement prominently displayed at the top of the first page of the notice: "The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official";

(iii) The date and nature of the default and the manner in which the default may be cured; and

(iv) In the event that the lender will be exercising its remedy of foreclosure or other remedies, the date or expected date of the foreclosure or other remedies.

(3) Head Start grantees which purchase facilities with respect to which the responsible HHS official has subordinated the Federal Interest to that of the lender must keep the lender informed of the current addresses and telephone numbers of the agencies to which the lender is obligated under paragraph (b) of this section to give notice in the event of a default.

### **1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.**

(a) The mortgage agreement, or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage, shall provide in the case of default by the grantee or the withdrawal or termination of the grantee from the Head Start program that ACF may intervene. In the case of a default, the mortgage agreement or security agreement must provide that ACF may intervene to ensure that the default is cured by the grantee or another agency designated by ACF and that the lender shall accept the payment of money or performance of any other obligation by ACF's designee, for the grantee, as if such payment of money or performance had been made by the grantee. The agreement shall also provide that ACF will have a period of 60 days after notification by the grantee of default in which to intervene to attempt to cure the default. The agreement shall further provide that in the event of a default, or the withdrawal or termination of the grantee the mortgage may be assumed by an organization designated by ACF. The mortgagee or creditor will have the right to approve the organization designated to assume the mortgage, but such approval will not be withheld except for good reason. The provisions required for inclusion in mortgages must be included in the mortgages of previously purchased facilities unless a convincing justification for not doing so is shown by the Head Start grantee.

(b) The grantee must immediately provide the responsible HHS official with both telephonic and written notification of a default of any description on the part of the grantee under a real property or chattel mortgage.

(c) In the event that a default is not cured and foreclosure takes place, the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share as defined in 45 CFR 74.2, or, if part 92 is applicable, to ACF's share as defined in 45 CFR 92.3. If ACF and the mortgagee or

creditor have agreed that ACF's Federal interest will be subordinated to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with Sec. 1309.21 and any other applicable Federal law.

### **1309.23 Insurance, bonding and maintenance.**

(a) At the time of acquiring a facility or receiving approval for the previous purchase of a facility, the grantee shall obtain insurance coverage for the facility which is of the same type as the coverage it has obtained for other real property it owns, which includes student liability insurance and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section as follows:

(1) A title insurance policy which insures the fee interest in the facility for an amount not less than the full appraised value as approved by ACF, or the amount of the purchase price, whichever is greater, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails. If no endorsement naming ACF as loss payee is made, the grantee is required to pay ACF the title insurance proceeds it receives in the event of title failure; and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is owned by the grantee.

(b) The grantee shall submit copies of such insurance policies to ACF within five days of acquiring the facility or receiving approval for the previous purchase of a facility. If the grantee has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance policies within five days of acquiring the facility or receiving approval for the previous purchase of a

facility, and it shall submit copies of the policies within five days of its receipt of them.

(c) The grantee must maintain facilities acquired with grant funds in a manner consistent with the purposes for which the funds were provided and in compliance with State and local government property standards and building codes.

## **Subpart D—Modular Units**

### **1309.30 General.**

In addition to the special requirements of Secs. 1309.31-1309.34 of this part, the proposed purchase or request for approval of a previous purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) Section 1309.10(j) of this part, which requires a certification by a licensed engineer or architect of the structural soundness of a facility prior to approval of an application for grant funds, is replaced by Sec. 1309.33; and

b) Section 1309.21(d) of this part does not apply to the proposed purchase of modular units if the land on which the unit is installed is not owned by the grantee.

### **1309.31 Site description.**

(a) An application for the purchase or approval of a previous purchase of a modular unit must state specifically where the modular unit will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase land on which to install the modular unit or if the previously purchased modular unit is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

(b) Modular units which are purchased with grant funds and which are not permanently

affixed to land, or which are affixed to land which is not owned by the grantee, must have posted in a conspicuous place the following notice: "On (date), the Department of Health and Human Services (DHHS) awarded (grant number) to (Name of grantee). The grant provided Federal funds for conduct of a Head Start program, including purchase of this modular unit. The grant incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the express written approval of the responsible DHHS official, or sold or transferred to another party without the written permission of the responsible DHHS official. These conditions are in accordance with the statutory provisions set forth in 42 U.S.C. 9839; the regulatory provisions set forth in 45 CFR part 1309, 45 CFR part 74 and 45 CFR part 92; and Administration for Children and Families' grants policy."

(c) A modular unit which has been approved for purchase and installation in one location may not be moved to another location without the written permission of the responsible HHS official.

### **1309.32 Statement of procurement procedure for modular units.**

(a) An application for the purchase of a modular unit must include a statement describing the procedures which will be used by the grantee to purchase the modular unit.

(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR parts 74 and 92, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval of a previous purchase of a modular unit also must include a copy of the specifications for its unit.

### **1309.33 Inspection.**

A grantee which purchases a modular unit with grant funds or receives approval of a previous purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a previous purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

### **1309.34 Costs of installation of modular unit.**

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, all reasonable costs necessary to the installation of a modular unit the purchase of which has been approved by the responsible HHS official are payable with grant funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.

## **Subpart E—Other Administrative Provisions**

### **1309.40 Copies of documents.**

Certified copies of the deed, loan instrument, mortgage, and any other legal documents related to the purchase of the facility or to the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

### **1309.41 Record retention.**

All records pertinent to the purchase of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership of the facility plus three years.

### **1309.42 Audit of mortgage.**

Any audit of a grantee which has purchased a facility with grant funds shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit are payable with grant funds.

### **1309.43 Use of grant funds to pay fees.**

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the purchase of a facility (including reasonable and necessary fees and costs incurred prior to the submission of an application under Sec. 1309.10 of this part or prior to the purchase of the facility) are payable with grant funds, but require prior, written approval of the responsible HHS official.

### **1309.44 Independent analysis.**

(a) The responsible HHS official may direct the grantee applying for funds to purchase a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to Sec. 1309.11 of this part, or the statement under Sec. 1309.10(g) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part.

(b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property proposed to be purchased is situated.

(c) Section 1309.43 of this part applies to payment of the cost of the analysis.